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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD ORVILLE SCHULTZ,
Petitioner,
v.
BRIAN DUFFY,
Respondent.

No. 2:15-cv-796-EFB P

ORDER

This action was opened when Mr. Schultz, a state prisoner without counsel, filed a 340-page “motion to protect petitioner against tolling until state remedies are exhausted.” ECF No. 1. On page 101 of that motion, Mr. Schultz states that he will identify “many other issues . . . in [his] upcoming writ of habeas corpus.” Despite its length, the filing does not appear to include any specific details regarding the judgment of conviction or sentence that Mr. Schultz wishes to challenge. Nor does the filing contain any claims for relief. Mr. Schultz has also filed an application for leave to proceed in forma pauperis and a request for appointment of counsel.

Mr. Schultz has not properly commenced a habeas action because he has not filed a petition as required by Rule 3 of the Rules Governing § 2254 Cases. *See Woodford v. Garceau*, 538 U.S. 202, 203 (2003). The court will not issue any orders granting or denying relief until an action has been properly commenced. *See, e.g., Delarm v. McDonald*, No. Civ-S-11-0750 CKD P, 2011 WL 6012346, *2 n.6 (E.D. Cal. Dec. 1, 2011) (“filing a request for an extension of time

1 to file a § 2254 habeas petition before the petition has actually been filed is not proper as there is
2 no § 2254 action until the petition has been filed”). If Mr. Schultz wishes to proceed with
3 this case, he must file a petition.

4 Accordingly, it is hereby ORDERED that:

5 1. Mr. Schultz shall file a petition for writ of habeas corpus within 30 days of the date of
6 this order and failure to do so will result in this case being closed; and

7 2. The Clerk of the Court is directed to send Mr. Schultz the court’s form for application
8 for writ of habeas corpus.

9 DATED: April 16, 2015.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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